

An Introduction to the BIS Export Enforcement Program



EXPORT ENFORCEMENT

**BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE**

Deputy Assistant Secretary Wendy L. Wysong

Summary of the Export Enforcement Program

The mission of the Bureau of Industry and Security (BIS) Export Enforcement is to protect U.S. national security, homeland security, foreign policy, and economic interests through a law enforcement program focused on: sensitive exports to hostile entities or those that engage in onward proliferation; prohibited foreign boycotts; and related public safety laws. BIS Export Enforcement (EE) is an elite law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. EE accomplishes its mission through preventative enforcement activities as well as by identifying and apprehending violators and by pursuing appropriate criminal and administrative sanctions. BIS works with the Department of Justice to impose criminal sanctions for violations, including incarceration and fines, and with the Department of Commerce's Office of Chief Counsel for Industry and Security to impose civil penalties for violations, including fines and denials of export privileges. EE also works with other law enforcement agencies in its investigations, including the FBI and the Department of Homeland Security.

Preventative Enforcement

BIS places the highest value on stopping potential violations before they occur. Besides outreach activities to the export community, prevention also includes actions that directly stop violations before they occur, such as conducting end-use checks, detaining shipments suspected of violations of the EAR, placing parties on the Unverified List, recommending denial of license applications, and preventing release of controlled technology to foreign nationals. Preventive enforcement activity also includes issuing warning letters (76 in FY 2004). Other preventative enforcement measures include:

Pre-License Checks and Post-Shipment Verifications (End-Use Checks):

EE's Office of Enforcement Analysis (OEA) screens all export license applications to ensure export control enforcement information is considered before any final license decision is made. An interagency committee reviews license applications to assess diversion risks, to identify potential violations, and to determine the reliability of those receiving controlled U.S.-origin commodities or technical data. In some instances, a pre-license check is conducted to determine the bona fides of the transaction and the end-user. EE factors the result of this check into the licensing recommendation EE makes to BIS's licensing offices. In addition, EE carries out post-shipment verifications to ensure that a controlled U.S.-origin item has actually been delivered to the authorized ultimate consignee or end-user and that the item is being used as licensed.

Sentinel Program:

End-use checks are conducted primarily through BIS's Sentinel Program which places two trained OEE criminal investigators in a country to visit the end-users of sensitive controlled commodities and determine whether these items are being used in accordance with license conditions. Sentinel teams assess the suitability of foreign end-users to

receive U.S.-origin licensed goods and technology, assess prospective end-users on pending license applications for diversion risk, and conduct educational outreach to foreign trade groups. In this way, Sentinel trips help to create the confidence needed to foster trade while strengthening U.S. security.

Unverified List:

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check (“PLC”) or a post-shipment verification (“PSV”) for reasons outside of the U.S. Government’s control. Any transaction to which a listed person is a party will be deemed by BIS to raise a “red flag” with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 C.F.R. Part 732.

Visa Application Review Program:

The Visa Application Review Program is conducted to prevent unauthorized access to controlled U.S. technology or technical data by foreign nationals visiting the United States. EE reviews information on visa applications to detect and prevent possible violations of the EAR. Each year, under this program, EE makes recommendations against issuing visas to the U.S. Department of State.

Automated Export System (AES) Review Program:

EE reviews AES records both before goods are exported and again after shipments take place to uncover attempts to export items illegally. EE specifically targets items for export to destinations of concern and exports of proliferation concern. Through the AES Review Program, EE also identifies past shipments that may have violated the Export Administration Regulations and refers them for further investigation. Hundreds of investigations of suspected export control violations occur annually, based on the routine review of AES records.

Export Enforcement

BIS conducts investigations of potential export control violations through its Office of Export Enforcement. OEE investigators are located in eight field offices in Los Angeles, San Jose, New York, Washington, Boston, Miami, Dallas, and Chicago. In Fiscal Year 2004, BIS opened a new regional office in Houston. OEE works cooperatively with the exporting community to help them prevent violations. When preventative measures fail, OEE pursues criminal and administrative sanctions. To do this, OEE special agents have traditional police powers, including the authority to make arrests and execute search and arrest warrants. In addition, agents may issue administrative subpoenas and detain and seize goods about to be illegally exported.

OEE field offices are supported by OEE Intelligence and Field Support Division and by the OEA, based in BIS's Washington, D.C., headquarters. Intelligence and Field Support

Division agents generate leads for investigations conducted in the field and coordinate the deployment of highly trained Computer Evidence Recovery agents stationed throughout the United States. These agents participate in the execution of search warrants to seize stored digital information from hard drives, servers, and other computer equipment and conduct forensic computer analysis of the seized data in support of ongoing investigations.

Overseas Attaché Program:

As part of BIS's international efforts to achieve its enforcement mission, BIS sends experienced Special Agents overseas as export control attachés at key U.S. embassies in Beijing, China; Abu Dhabi, United Arab Emirates; New Delhi, India; Moscow, Russia; and Hong Kong. The principal mission of the attaché is to help ensure that U.S. dual-use goods entering a country (or region) in which the attaché is posted are used in accordance with U.S. export control laws and regulations. This is accomplished through targeted end-use checks and by working with the host governments and local businesses to ensure that they understand and comply with U.S. export control laws and regulations. The attachés also work with host governments and local businesses to provide information and appropriate training to facilitate better understanding of U.S. dual-use export control laws and regulations, and to help develop indigenous export control capabilities.

Prosecuting Violators

Penalties:

Violations of the EAR are subject to both criminal and administrative penalties. In some cases, where there has been a willful violation of the EAR, violators may be subject to both criminal fines and administrative penalties. However, for most administrative violations, there is no intent requirement, which means that administrative cases can be brought in a much wider variety of circumstances than criminal cases. Fines for export violations can reach up to \$1 million per violation in criminal cases, \$11,000 per violation in most administrative cases, and \$120,000 per violation in certain administrative cases involving national security issues.¹ In addition, criminal violators may be sentenced to prison time and administrative penalties may include the denial of export privileges. A denial of export privileges basically prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is a

¹ These violations are based on the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401- 2420 (2000)), as amended, and inflation adjustments made in 15 C.F.R. § 6.4 (2004). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273, August 5, 2005), continues the Regulations in effect under IEEPA.

violation of the EAR for anyone to participate in an export transaction subject to the EAR with a denied person.

It should be noted that in most cases, BIS reaches negotiated settlements in its administrative cases prior to a formal administrative hearing. Those negotiated settlements are often reached as a result of voluntary self-disclosures (VSDs) of violations by companies and individuals. BIS considers VSDs to be a significant mitigating factor when negotiating settlements of administrative cases. VSDs reflect a company's or individual's acknowledgment of guilt and acceptance of responsibility for EAR violations. To encourage VSDs, in appropriate cases, fines and other administrative penalties may be significantly reduced. Guidance regarding administrative penalties is provided in Supplement No. 1 of Part 766 of the EAR. In that guidance, some factors, including VSDs, are given "great weight" as significantly mitigating violations

Temporary Denial Orders:

Temporary Denial Orders are issued by the Assistant Secretary for Export Enforcement, denying any or (typically) all of the export privileges of a company or individual to prevent an imminent export control violation. These orders are issued ex parte for a renewable 180-day period and cut off not only the right to export from the United States, but also the right to receive or participate in exports from the U.S.

Section 11(h) Denials:

Section 11(h) of the Export Administration Act provides that, at the discretion of the Secretary of Commerce, no person convicted of a violation of the EAA, IEEPA, or Section 38 of the Arms Export Control Act (or any regulation, license, or order issued under any of these laws) will be eligible to apply for or use any export license issued under the EAA for up to ten years from the date of the conviction. In addition, Section 11(h) provides that the Secretary of Commerce may revoke any export license which the party had at the time of the conviction.

Antiboycott Compliance

The antiboycott provisions of the Export Administration Regulations prohibit U.S. persons from complying with certain requirements of unsanctioned foreign boycotts, including providing information about business relationships with Israel and refusing to do business with persons on boycott lists. In addition, the EAR requires that persons report their receipt of certain boycott requests to BIS. Under the antiboycott provisions of the EAR, a controlled-in-fact foreign subsidiary of a domestic U.S. company is considered to be a U.S. person. If you have a question about any boycott-related matter please contact the Office of Antiboycott advice line at 202 482-2381 or via the E-mail link on the antiboycott compliance section of the BIS website.